

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CHERYL WESTERMAN

**v.
BARBARA SHOGREN**

RESPONDENT,

APPELLANT.

DOCKET NUMBER WD74066

DATE: June 19, 2012

Appeal From:

Lafayette County Circuit Court
The Honorable Dennis A. Rolf, Judge

Appellate Judges:

Division Four: Lisa White Hardwick, Chief Judge, Presiding, Cynthia L. Martin, Judge and
Kenneth Garrett, Special Judge

Attorneys:

Brett A. Emison and Jessica M. Agnelly, Lexington, MO, for respondent.

Kevin Weakley and Carol Kistulek, Overland Park, KS, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

CHERYL WESTERMAN,

RESPONDENT,

v.

BARBARA SHOGREN,

APPELLANT.

No. WD74066

Lafayette County

Before Division Four: Lisa White Hardwick, Chief Judge, Presiding, Cynthia L. Martin, Judge and Kenneth Garrett, Special Judge

Cheryl Westerman sued Barbara Shogren for injuries arising out of an automobile accident. Shogren appeals from the trial court's judgment awarding \$200,000 to Westerman. Shogren claims that the trial court erred in (1) denying her motion for a new trial on the basis that the jury's verdict awarded damages for future, speculative surgery; (2) allowing an expert witness to testify about his personal neck condition; and (3) issuing a protective order that limited the scope of discovery about Westerman's medical issues.

AFFIRM.

Division Four holds:

(1) Shogren failed to object to either the testimony that established Westerman's potential need for surgery in the future or the damage instruction that allowed the jury to "fairly and justly compensate" Westerman on the basis of damages she was "reasonably certain to sustain in the future." As such, Shogren failed to preserve her claim of error for appellate review. Even if Shogren had preserved her claim for appellate review, Shogren did not negate the possibility that the jury awarded damages supported by evidence other than the need for future surgery. The trial court did not err in denying Shogren's motion for a new trial.

(2) Shogren failed to object that the expert witness's testimony exceeded the scope of proper expert testimony because it invaded the province of the jury by commenting on Westerman's veracity. As such, Shogren failed to preserve her claim of error for appellate review. Even if Shogren had preserved the error, she misstated the scope and the extent of the expert witness's testimony. The expert witness's testimony about his personal neck condition was presented to illustrate his general medical opinion that routine degenerative changes do not cause chronic pain. The illustration could have aided the jury in its determination of causation. The trial court did not err in admitting the expert witness's testimony.

(3) The assertion of damages in a petition affects the scope of discovery, but does not permit unlimited discovery. The trial court entered a protective order that limited Shogren's access to the medical records held by Westerman's primary care physician and limited the primary care physician's testimony. The protective order gave Shogren unlimited access to records and testimony about any matters relating to Westerman's back. Access to medical records and testimony about other conditions was temporally limited to a three and a half year period preceding Westerman's accident. In all cases, the discovery of a plaintiff's prior medical history and records is subject to reasonable limitations as to time and condition. The trial court did not abuse its discretion in entering the protective order.

Opinion by Cynthia L. Martin, Judge

June 19, 2012

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